

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JESUS ROMERO)	
Claimant)	
VS.)	
)	Docket No. 217,617 & 219,371
EXCEL CORPORATION)	
Respondent)	
Self-Insured)	

ORDER

Claimant requested Appeals Board review of Administrative Law Judge Pamela J. Fuller's Award entered on August 24, 1998. The Appeals Board heard oral argument on March 24, 1999.

APPEARANCES

Claimant appeared by his attorney, Michael L. Snider of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, D. Shane Bangerter of Dodge City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has consider the record and has adopted the stipulations listed in the Award.

ISSUES

This case involves two separate, docketed cases originally alleging two separate dates of accident. In Docket No. 217,617, the claimant alleged an accident date of February 5, 1996, and each and every day thereafter. Claimant alleged he initially injured his arm, shoulder, hand, and wrist during a traumatic fall from a platform and then suffered further injury from overuse of his upper extremities at work. In the other case, Docket No. 219,371, claimant alleged a low-back injury from overuse at work occurring on November 25, 1996, and each and every day thereafter.

Stipulations were taken and issues were defined in proceedings before Special Administrative Law Judge William Morrissey on June 18, 1998. At that time, the parties stipulated that February 5, 1996, and each and every day thereafter would be used as the date of accident for purposes of the Award for both docketed claims. The claims were also consolidated for litigation purposes.

The Administrative Law Judge awarded claimant a 19 percent permanent partial disability to the left upper extremity. Claimant appeals that finding and contends he is entitled to a permanent partial general bodily disability based both on a left upper extremity injury and a low-back injury. Work disability is not an issue as respondent returned claimant to work at a comparable wage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board affirms the Administrative Law Judge's finding that claimant is only entitled to a permanent partial disability award based on an injury to his left upper extremity. Accordingly, claimant's permanent partial disability benefits are computed based on the schedule found at K.S.A. 44-510d(a)(13).¹ As further explained below, the Appeals Board, however, finds claimant should be awarded a 23.5 percent permanent partial disability of the left upper extremity and the cost of medical treatment for a work-related low-back injury.

Claimant argues that the most credible and persuasive medical evidence contained in the record is the medical opinion of Preston Brent Koprivica, M.D. At the claimant attorney's request, Dr. Koprivica evaluated and examined claimant on September 25, 1997. Dr. Koprivica assessed claimant with a 32 percent left upper extremity permanent impairment that converted to a 19 percent whole body impairment. He also diagnosed claimant with a chronic lumbar strain. Based on loss of range of motion and claimant's subjective complaints of pain, the doctor assessed a 14 percent whole body permanent impairment for the back strain. These two whole body impairments were combined for a 30 percent whole body impairment. Dr. Koprivica utilized the AMA Guides, Third Edition (Revised) in determining his permanent functional impairment ratings.

Orthopedic surgeon Guillermo Garcia, M.D., was claimant's treating physician. He treated claimant for his left upper extremity injuries from May 14, 1996, through September 4, 1997. On July 5, 1996, Dr. Garcia performed a carpal tunnel release on

¹Permanent partial disability of the arm including the shoulder is limited to 225 weeks of compensation.

claimant's left wrist. He then, on January 17, 1997, performed an arthroscopic examination of claimant's left shoulder. At that time, the doctor repaired the labrum, decompressed the subacromial space, and performed acromioclavicular arthroplasty with release of the coracoacromial ligament of claimant's left shoulder. In Dr. Garcia's medical note dated January 6, 1997, he indicated that claimant was complaining of some amount of low-back pain. During claimant's visit on April 22, 1997, Dr. Garcia noted he had been authorized to treat claimant's low back. X-rays were taken and the only abnormality found was spina bifida occulta, a congenital defect. Dr. Garcia placed claimant on an exercise program for his low-back complaints.

Dr. Garcia released claimant from treatment on September 4, 1997. He gave claimant a 15 percent permanent functional impairment rating for claimant's left upper extremity injuries. The doctor was questioned whether he used the AMA Guides in determining claimant's functional impairment. Dr. Garcia answered, although he had not referenced the AMA Guides in his notes, he imagined he followed the Third Edition instead of the Fourth Edition in determining claimant's functional impairment rating.

In regard to claimant's low-back condition, Dr. Garcia felt that claimant had suffered back sprain at work. But the back sprain had resolved, and claimant had no permanent impairment as a result of the sprain.

The Administrative Law Judge appointed physical medicine and rehabilitation physician Philip R. Mills, M.D., to conduct an independent medical examination of claimant. On January 29, 1998, Dr. Mills examined and evaluated the claimant. In accordance with the AMA Guides, Fourth Edition, Dr. Mills assessed claimant with a 19 percent left upper extremity permanent functional impairment and did not assign a permanent functional impairment for claimant's low-back complaints. The doctor opined that claimant's congenital spina bifida occulta would cause claimant to have an increase in back complaints. If claimant does have a back problem, the doctor opined the problem would be secondary to the congenital defect rather than an injury.

The Appeals Board concludes that the most persuasive and credible medical opinions contained in the record are those of claimant's treating physician, Dr. Garcia, and the appointed independent medical examiner, Dr. Mills. Those physicians' opinions should be given more weight than the opinions of Dr. Koprivica who saw claimant on one occasion at the request of his attorney. Therefore, the Appeals Board finds claimant's low-back injury was only a temporary injury and did not result in claimant suffering any permanent functional impairment. But the medical treatment that claimant received for treatment of this temporary condition is authorized treatment and is ordered paid by the respondent.

The 19 percent permanent partial disability awarded for claimant's work-related left upper extremity injuries was based on Dr. Mills' opinion utilizing the Fourth Edition of the AMA Guides. Claimant argues that K.S.A. 44-510e(a) requires the Third Edition (Revised) of the AMA Guides be used to assess functional impairment for the February 5, 1996, date

of accident and not the Fourth Edition. The Appeals Board agrees with the claimant. The claimant further argues that the only physician who expressed an opinion on functional impairment in accordance with the AMA Guides, Third Edition (Revised) was Dr. Koprivica. The Appeals Board disagrees with this argument. Dr. Garcia also testified that he utilized the AMA Guides, Third Edition (Revised) in determining his 15 percent left upper extremity functional impairment rating.

The Appeals Board has reviewed both Dr. Garcia's and Dr. Koprivica's functional impairment ratings as the ratings relate to claimant's left upper extremity injuries. The Appeals Board concludes that both of these ratings should be given equal weight in determining claimant's entitlement to permanent partial disability benefits. Therefore, giving equal weight to Dr. Koprivica's 32 percent rating with Dr. Garcia's 15 percent rating the Appeals Board finds that claimant is entitled to a 23.5 percent permanent partial disability of the left upper extremity including the shoulder.

Furthermore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions of law as its own that are not inconsistent with the findings and conclusions set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Pamela J. Fuller's Award entered on August 24, 1998, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Jesus Romero, and against the respondent, Excell Corporation, a qualified self-insured, for an accidental injury which occurred on February 5, 1996, and based upon an average weekly wage of \$491.35.

Claimant is entitled to 9.33 weeks of temporary total disability compensation at the rate of \$326 per week or \$3,041.58, followed by 50.68 weeks at the rate of \$326 per week or \$16,521.68, for a 23.5% permanent partial disability of the left upper extremity including the shoulder, making a total award of \$19,563.26.

As of May 28, 1999, the entire Award of \$19,563.26 is due and owing claimant and ordered paid in one lump sum less any amounts previously paid.

All authorized medical expenses are ordered paid by the respondent.

The Appeals Board approves and adopts all remaining orders set forth in the Award.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael L. Snider, Wichita, KS
D. Shane Bangerter, Dodge City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director